IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO. 519 OF 1994
WITH
CRIMINAL REVN. APPLN. NO.217 OF 1992

CRIMINAL APPEAL NO. 519 OF 1994

The State of Maharashtra ..Appellant

V/s.

1. Navnath Bhagwan Shelke,
   Age 25 Years.

2. Adinath Bhagwan Shelke,
   Age 30 years.

3. Rukhminibai Bhagwan Shelke
   55 years.

4. Bayadabai Bhaurao Pawar
   21 years.

   All residents of Bhagatwadi, Taluka
   Karmala, District Solapur. .. Respondents.
   (Orig. Accused Nos. 1 to 4.)

Smt. P.H. Kantharia, A.P.P. for the State-Appellant.
Mr. V.M. Thorat i/b T.E. Mane for Respondents 1 to 4.

CRIMINAL REV. APPLN NO. 217 OF 1992

Shankar Tukaram Mane
Age 55 years, R/o Khadakwadi
Taluka Karmala,Dist. Solapur. ..Petitioner
(Orig.Complainant)

V/s.

1. Navnath Bhagwan Shelke,
   Age 25 Years.

2. Adinath Bhagwan Shelke,
   Age 30 years.

3. Rukhminibai Bhagwan Shelke
   55 years.

4. Bayadabai Bhaurao Pawar
   21 years.

   All residents of Bhagatwadi, Taluka
   Karmala, District Solapur. .. Respondents.
   (Orig. Accused Nos. 1 to 4.)

5. State of Maharashtra

Mr. S.G. Kudle for the petitioner.
Mr. V.M. Thorat i/b T.E. Mane for Respondents 1 to 4.
Smt. P.H. Kantharia,A.P.P. for the State-Respondent No.5.

CORAM : S.S. PARKAR, &
ANOOP V.MOHTA, JJ.

DATE : 2ND MAY, 2005.

ORAL JUDGMENT (**PER ANOOP V. MOHTA, J.**)

. The State of Maharashtra has preferred this appeal against an order of acquittal, dated 18/8/1992, passed by II Additional Sessions Judge, Solapur, thereby, all the respondents-accused Nos. 1 to 4 were acquitted of the charges under Section 302, 498A and 304B r/w Section 34 of Indian Penal Code (for short IPC).

2. A complaint dated 21/11/1989, was filed by Shankar Tukaram Mane, the father of Jayshree (the deceased), resident of Khadakwadi, Taluka Karmala, District Solapur, at Karmala Police Station, that

respondent-accused No.1, the husband and respondents-accused Nos.2,3 and 4, the Brother-in-law, Mother-in-law and Sister-in-law respectively, were harassing his daughter, the deceased, constantly on dowry demand, since 2-3 years of the marriage. Before that on 19th November, 1989, Shankar Mane, the complainant, after receipt of the information about the death of the deceased, through one Udhav Shelke, went to the village Bhagatwadi along with other relatives. They found the dead body of the deceased, in front of the residential house of the accused. The complainant and other relatives noticed some injuries on the private part of the deceased and also found some blood on her thigh. On enquiry, respondent No.2 stated that the deceased died due to the snake bite, vomiting and dysentery. The complainant therefore, suspected foul play and the FIR in question was lodged on 3rd day of the incident i.e. on 21/11/1989. On 19/11/1989 itself in the presence of three panchas, the inquest panchanama of the dead body of the deceased was carried out. The dead body was sent for post-mortem examination to Cottage Hospital, Karmala. The viscera was also sent to Chemical Analyser in order to ascertain the probable cause of death. The statements were also recorded by

the police. There was no complaint made of any kind against the respondents by the complainant in his first statement dated 19/11/1989 but feebly requested for inquiry. After due investigation, the charge sheet was submitted.

3. The charges were denied by the accused. The defence was of total denial. The prosecution has examined 11th witnesses. After considering the material on the record, the learned Judge by the impugned Judgment acquitted all the accused of the charges. Therefore, the present appeal by the State.

4. The complainant Shankar has also preferred the Criminal Revision Application No. 217 of 1992, against the order of acquittal in question, which was admitted on 10th August,1993.

5. Heard and gone through the record. We have considered the submission raised by the learned A.P.P, Smt. P.H. Kantharia, appearing for the State, and also the submission raised by the complainant in the revision. The basic submission of the State was that the prosecution succeeded in establishing every link in the chain of circumstantial evidence against the accused. The learned Judge has erroneously discarded the evidence. There was no delay in the facts and circumstances of the case to lodge the F.I.R. The

prosecution case of ill-treatment and harassment on account of dowry demand was not considered. The Onus was on the accused-respondents to show that the death of the deceased was not caused due to cruelty and harassment and further, the reason for such death, as she was residing with them. The accused failed to discharge the said burden. The medical evidence was wrongly reported. As the death was caused due to rupture of vital organ i.e. left kidney. The accused-respondents failed to explain the injuries on the person of the deceased. Their defence or explanation that the deceased died due to snake bite was false. The conduct of the accused supported the prosecution case rather than the defence. Therefore, it was a strong incriminating circumstance against the accused-respondents. The learned Judge, having held that the death was homicidal, wrong in acquitting the accused. The A.P.P., has relied on AIR 2003 S.C. 2108 (Alamgir Sani V. State of Assam), (2003) 1 S.C. 21,(Alamgir V. State), (2003) 1 S.C.C. 259 ((Anthony D’souza and others V. State of Karnataka), 2003 (1) S.C.C. 534 (Shahdevan Akuas Sagadevan V. State), 2000 (5) S.C.C. 197,(Joseph S/o Kooveli Poulo V. State of Kerla) and contended that the prosecution has brought on

the record the sufficient and connecting material to link the chain of circumstances, proving the involvement of the accused in the crime. Some discrepancies and contradictions in the testimony of the witnesses were not material and substantial. The presumption, as to the dowry death, which took place within 7 years of the marriage and in view of the material on the record of the harassment and ill-treatment, the accused be held guilty of the offence, as charged.

6. The learned advocate Mr. V.M. Thorat for the respondents contended that the finding given by the learned Judge that the death of the deceased was homicidal, is not correct. There is no material to support the same finding. The death of the deceased was not homicidal. He has relied on AIR 2003 S.C. 3601 (State of Rajasthan V. Rajaram), and submitted that this being the appeal against the acquittal, there is no case made out to interfere with the findings given by the learned Judge, based on the evidence on the record. Even after reappriciation, the view taken by the learned Judge is plausible, reasonable and possible and even otherwise, there are no appealing and substantial reason for the appellate Court to reverse the Judgment of

acquittal. Based on the same, he further contended that the prosecution has failed to connect the link of the circumstantial evidence and material to prove beyond reasonable doubt that accused and no one else had committed the crime. The conclusion arrived at by the learned Judge, based on the circumstantial evidence, in the present case, cannot be said to be perverse or unreasonable.

7. We are confirming the impugned order of acquittal also on the following reasoning; There is no direct evidence that the accused committed the murder of the deceased. There are no eye witnesses to support the case of prosecution. No independent witnesses have been supported, even the neighbours. As per the prosecution case, there was regular ill-treatment and harassment. The incident took place on 19/11/1989. The statement (Exh.20) was recorded on the same date. The complainant also went to the police station on 19/11/1989 and in his statement there was no reference made about the demand made by the accused or about the ill-treatment and harassment at their hands. As observed by the learned Judge, the statement shows that the complainant specifically stated, that the deceased was residing with

the accused happily. All the religious ceremonies were performed on the dead body of the deceased. However, on 21/11/1989, the F.I.R. in question was lodged by the complainant, P.W. 3,Shankar. There is no justification and supported material on the record, to show that why even on 20/11/1989 the complainant did not go to the police station to change

the statement or to lodged the said complaint.

8. The presumption of dowry death as provided in Section 113B of Evidence Act and reliance has been also placed on the Apex Court’s decision in Alamgir (Supra). In the present case, as noted above the P.W. 3, the father of the deceased, initially on 19/11/1989 made positive statement in the complaint that deceased was living happily with the accused. Later on, on 21/11/1989 he charged all the accused of the offence of ill-treatment, cruelty, dowry demand and that resulted in dowry death. P.W. 4 as noted above not supported the ill-treatment by the accused to the deceased. P.W. 3 is the father of the deceased except bald statement of demand of money and ill-treatment in his evidence, FIR. sought to contend that the accused were harassing the

deceased and committed murder. There is no supporting evidence even to the statement made by the P.W. 3 about the illegal demand or ill-treatment, as alleged.

9. It is only P.W. 5, Pandurang, the brother of the deceased stated that the deceased was complaining about the harassment and ill-treatment and their demand about gold ring and money. But there is no specific amount or date or place such demand, was placed on the record. It is also not clear that whether such harassment and demand was made‘ immediately before the date of incident or at earlier point of time. P.W. 4, Uttam Mane, the cousin of the deceased not supported that the deceased was ill-treated by the accused. P.W. 5, Pandurang Shelke. In the cross-examination admitted that "I have not stated before the police that the father of Jayshree used to complaint about the ill-treatment". P.W. 6, Kisan Shelke was declared hostile. In his cross-examination also, prosecution failed to elicit anything to support the case of ill-treatment or harassment and or dowry demand of the gold ring and cash from the deceased parents. P.W. 6, Kisan further stated that at the time of recording inquest panchanama, the father of the deceased P.W. 3,

Shankar was also present. There was no complaint made by any body about the death of the deceased. The father of the deceased and other stated that they had no complaint about anybody. P.W. 7, Sarjerao Waghmare was also declared hostile. In the cross-examination by A.P.P., he endorsed that the deceased died because of snake bite. The prosecution unable to extract from this witness anything to support that the accused were harassing and ill-treating the deceased. This witness has denied the statement marked "A" made to the police. P.W.8, Bhaskar Gaikwad drew the inquest panchanama of the dead body and referred the dead body for the post mortem and supported the prosecution to the extent that there was blood on the thigh and some medicine was applied but not more than that. In the present case, there is no case made of presumption of dowry death and therefore, the Apex Court’s decision in the Almgir (Supra) also not supports the prosecution case. Both the offences (u/s 302 and 304B) are unproved.

10. The witnesses Kisan Shelke, (P.W.6); Sarjerao (P.W. 7) were also unable to support the prosecution case in regard to the ill-treatment given by the accused to the deceased Jayshree. Merely, because the death of

the deceased took place within 7 years of her marriage that itself cannot be the reason to convict the accused. The substantial and corroborative evidence to prove that the death of the deceased was caused due to cruelty or torture or continuous harassment or the ill-treatment, as sought to be contended by the prosecution is missing. In the present case, except the bare complainant, there is no sufficient material to connect the case of the prosecution about the constant and continuous harassment and ill-treatment to the deceased by the accused. The prosecutions case of ill-treatment and harassment on account of dowry demand by the accused creates doubt in view of the complainant's own inconsistent statements, dated 19/11/1989 and 21/11/1989 respectively. These inconsistent statements goes to the root of the matter. The prosecution has according to us failed to discharge its burden and the appellant gets its benefit.

11. The learned Counsel appearing for the respondents-accused has argued, that the death in question was not homicidal, as held by the learned Judge. As per the prosecution and, as per the post-mortem report and C.A. Report Exh.30/31, the death was caused due to shock and Haemorrhage and due to

rupture of vital organ (left kidney). No poison was detected from the body of the deceased. There were injuries noted by P.W. 3, Shankar and other panch witness, P.W. 1, Sindhu and noted in the inquest panchanama, dated 19/11/1989. These were some injuries on the private and internal parts of the body of the deceased. There was no snake bite mark recorded or detected anywhere. P.W. 10, Dr. Chandrakant has opined that there is no poison detected from the body. The learned Judge, after considering all other materials according to us, came to the right conclusion that the death was homicidal. This contention of the respondents' Counsel is therefore, not accepted.

12. The question which needs consideration is whether the accused committed the murder of the deceased Jayshree. There is no eye witness to the incident. The C.A. report nowhere even suggested the case of snake bite. The death was caused because of rupture of left kidney. There were some injuries in the internal parts of the vital organ. The prosecution, however, unable to connect any material to show that the accused and no one else had committed or caused those vital injuries.There is nothing on the record to show that the deceased was

with the respondents before her first hospitalisation and last seen with the respondents. However, in the present case, as submitted by the prosecution, that all the accused were together lastly and thereafter, in the morning dead body was seen in front "verandha" of the house, But as per the evidence of P.W. 1 the deceased was taken to the hospital of Dr. Patil. P.W. 3 Shankar was aware of the fact that the deceased was taken to the hospital prior to the death. In his statement, there is no mention about any of such incident (Exh.20). P.W. 3, Shankar has not disputed his signature on Exh.20 dated 19/11/1989, but later on in the F.I.R. and in the evidence, he made contradictory statements. Before making the statement, on 19/11/1989, he had noticed these injuries on the body of the deceased. We have also noted that in the statement dated 19/11/1989, P.W. 3 has mentioned that the deceased was taken to Dr. Patil’s hospital at night but, as she was dead, she was brought back at the residence. The basic said independent witness Dr. Patil was not examined, by the prosecution in spite of the information placed on the record by P.W. 3. This further shows that the deceased was taken to the hospital by the in-laws. P.W. 4 Uttam, Cousin of the

deceased also not supported the case of the prosecution about the ill-treatment or harassment in the house of the accused. This witness has however, denied his earlier statement in the cross-examination that " I have not stated before the police that she was taken to Dr. Jadhav at Karmala". P.W. 4, however, corroborated the prosecution case that her body was reddish in colour. There was blood on the thigh and on the back.

13. All the accused in their statement under Section 313 of Code of Criminal Procedure simply denied the charges, even though, as per P.W. 3 it was reported to them by accused No.3 that the deceased died because of snake bite, vomiting and dysentery. There is nothing on record to suggest, who caused the injuries. There was no explanation given, as per prosecution, by the accused about those injuries. Therefore, such conduct of the accused in such circumstances can also one of the incriminating circumstance, as held by the Supreme Court in Kuldeep Singh and Anthony D’souza (Supra). The Apex Court has held that the false explanation given by accused provides additional link in the missing circumstances. In the present case, however all the accused simply denied the charges. This statement and

conduct and such circumstances can independently not be the basis for a conviction. There should be other substantial material evidence, to connect the accused with the crime. Therefore, it is difficult to accept the prosecution case on the basis of this conduct itself that the accused and no one else had committed the crime. Such conduct and answer can only be used, as a missing link for completing the chain or circumstances against the accused. There can not be conviction based only on uncorroborated circumstances and material.

14. P.W.9, Gopilal Tiwari, who was working as Police Head Constable on 19/9/1989, on information, that a girl died because of snake bite and due to vomiting and

dysentery, the accidental death No.17/89 was registered and the matter was handed over to Gaikwad (P.W.8) for the further investigation. P.W. 10, Dr.Chandrakant has opined that the probable cause of the death was due to shock and haemorrhage due to rupture of vital organ i.e. left kidney. there was no poison detected, as per the C.A. report. This evidence of Doctor remained intact. P.W. 11, Yashwant Pawar, was the P.S.I. of Karmala Police station, who carried out the investigation in

question. The crime was registered on 21/11/1989, Exh.19, and also recorded the statement of 21 persons from the village. As noted no other independent witnesses have been examined, even though, the statements were recorded of 21 persons from the village Bhagatwadi and Khadakwadi. This witness has confirmed the recorded statements of Kisan, P.W.6 and Sarjerao, P.W.7. This witness has stated in the cross-examination by the advocate of the accused that, " I have also recorded the statements of the persons, who were residing nearby the house of the accused persons."

15. In the present case, the discrepancies and the contradictions in the evidence not on vital aspects are not supporting the prosecution case. The Apex Court’s decision in Joseph (Supra) also does not helpful to the prosecution.

16. All the evidence of these witnesses, itself is not sufficient to connect the accused with the crime. There is no clinching evidence and circumstances based on connecting materials on record and therefore, mere suspicion, in the present fact and circumstances of the matter, we are not convinced that the case is made out

by the prosecution to reverse the reasonable view taken by the learned Judge based on the material on the record. As there is no direct evidence, the circumstantial evidence are not sufficient enough to link the accused with the crime. The settled principle of convicting the accused based on the circumstantial evidence as laid down in State of Rajasthan, by the Apex Court, Alamgir, Anthony D'souza, Kuldeep Singh, Joseph (Supra) as relied by the parties, in the present fact and circumstances supports the reasoning given by the learned Judge. The decision cannot be said to be perverse or contrary to the record. Therefore, we are declined to interfere with the order of acquittal, The view taken is within the frame work of law and the record. Taking into account, the above facts, circumstances and reasonings, there is no substance in the appeal.

17. In view of this and for the above reason, the Criminal Revision Application No.217 of 1992 filed by the original Complainant,P.W.3-Shankar also need no further reasoning, for the dismissal.

18. Therefore, the Criminal appeal No. 519 of 1994

and Criminal Revision Application No. 217 of 1992 are dismissed and rule in Revision is discharged. The bail bonds stand cancelled. Order accordingly.

[S.S. PARKAR, J.]

[ANOOP V. MOHTA, J.]